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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

FRANCIS KELLY, DENNIS KRUGER, ROBERT P. ) Case No. C 05-1287 SI (ENE)  
ANDERSON, GEORGE O. BULLWINKEL, )  
STEPHEN C. CHRISTENSEN, FRED J. FEGAN, ) **NOTICE OF CLASS ACTION**  
GERALD L. GREY, THOMAS E. KAZARIAN, ) **CLAIM FOR VESTED SICK**  
FRANK M. KUNST, GARY J. LAVAYSSE, ) **LEAVE**

PATRICK H. McLAUGHLIN, DANIEL M. )  
O'DONNELL, ROBERT G. OLLER, HENRY L. )  
RANEY, GEORGE J. RIPOLL, PATRICIA )  
CAULFIELD AND HORTENCE PUC CETTI, )  
Individually and on Behalf of Others Similarly )  
Situating, )

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO; SAN )  
FRANCISCO FIRE DEPARTMENT; EDWARD M. )  
HARRINGTON, in his Official Capacity as Controller )  
of the City and County of San Francisco; PHILIP A. )  
GINSBURG in his Official Capacity as Human )  
Resources Director of the City and County of San )  
Francisco; and DOES ONE through FIFTY, inclusive, )

Defendants.

**NOTICE TO ALL UNIFORMED EMPLOYEES OF THE SAN FRANCISCO FIRE DEPARTMENT WHO, ON OR AFTER FEBRUARY 25, 2002, MAY HAVE RECEIVED A LUMP SUM PAYMENT, UPON SEPARATION FROM EMPLOYMENT, FOR ANY VESTED SICK LEAVE.**

**THIS IS A NOTICE OF YOUR RIGHTS IN CONNECTION WITH A CLASS ACTION CLAIM FOR VESTED SICK LEAVE AGAINST THE CITY AND COUNTY OF SAN FRANCISCO.**

**PLEASE READ THIS NOTICE CAREFULLY!**

**YOU MAY HAVE ALREADY RECEIVED A NOTICE OF YOUR RIGHTS IN CONNECTION WITH A CLAIM FOR COMPENSATORY TIME (IN LIEU OF OVERTIME COMPENSATION) AGAINST THE CITY AND COUNTY OF SAN FRANCISCO. THIS NOTICE CONCERNS A DIFFERENT CLAIM MADE IN THE SAME LAWSUIT AGAINST THE CITY AND COUNTY OF SAN FRANCISCO.**

**I. INTRODUCTION**

This notice is to inform you about a class action claim for vested sick leave. You are receiving this notice because, according to the records of the City and County of San Francisco (“City”), you may be a member of the plaintiff class of former uniformed members of the San Francisco Fire Department. The class is described as: “All former uniformed employees of the San Francisco Fire Department who were eligible for Training and Education Achievement Pay, Retention Pay and/or Terrorism Response Training Pay and who, following separation from employment, received lump sum payments on or after February 25, 2002 for any vested sick leave that did not include Training and Education Achievement Pay, Retention Pay and/or Terrorism Response Training Pay.” If you are a member of the class, you should read this notice because your rights may be affected by this suit.

**II. DESCRIPTION OF THE LAWSUIT**

On February 25, 2005, former uniformed members (firefighters and others) of the San Francisco Fire Department (“SFFD”) filed a lawsuit against the City and County of San Francisco, the San Francisco Fire Department, San Francisco Controller Edward M. Harrington, and San Francisco Human Resources Director Philip A. Ginsburg. The named plaintiffs are Francis Kelly, Dennis

1 Kruger, Robert P. Anderson, George O. Bullwinkel, Stephen C. Christensen, Fred J. Fegan, Gerald  
2 L. Grey, Thomas E. Kazarian, Frank M. Kunst, Gary J. Lavaysse, Patrick H. McLaughlin, Daniel M.  
3 O'Donnell, Robert G. Oller, Henry L. Raney, George J. Ripoll, Patricia Caulfield and Hortence  
4 Puccetti. The lawsuit is pending in the United States District Court for the Northern District of  
5 California (San Francisco Division) and is currently in the early pretrial stage of proceedings.

6 The lawsuit alleges, among other things, that plaintiffs and others similarly situated are entitled  
7 to recover additional monies for vested sick leave. The plaintiffs allege that the City has improperly  
8 calculated lump sum payments for vested sick leave that were made to former uniformed members  
9 of the SFFD upon separation from employment, by failing to include Training and Education  
10 Achievement Pay, Retention Pay and/or Terrorism Response Training Pay in the lump sum payments.  
11 The plaintiffs allege that they and others similarly situated are entitled to recover additional monies  
12 for vested sick leave. The plaintiffs also seek a change in City policies so that, in the future, all lump  
13 sum payments for vested sick leave will be calculated to include Training and Education Achievement  
14 Pay, Retention Pay and/or Terrorism Response Training Pay, as appropriate.

15 The City has denied that it violated the law. The City contends that it properly calculated and  
16 paid lump sum payments to former uniformed employees of the SFFD upon separation from  
17 employment and that such former employees are not entitled to additional pay.

### 18 **III. THE OTHER NOTICE YOU MAY HAVE RECEIVED ABOUT THIS** 19 **LAWSUIT**

20 In this lawsuit, the plaintiffs also allege that the City improperly calculated lump sum  
21 payments made to uniformed members of the SFFD upon separation from employment for unused  
22 compensatory time off in lieu of overtime, under the provisions of the Fair Labor Standards Act  
23 ("FLSA"), by failing to include Training and Education Achievement Pay, Retention Pay and/or  
24 Terrorism Response Training Pay in the lump sum payments. You may have received a notice dated  
25 October 26, 2005 regarding the aspect of this case related to the claim for compensatory time off in  
26 lieu of overtime. That notice required you to "opt in," or join the suit, by completing and returning  
27 a "Consent to Join" form to plaintiffs' attorneys.

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The procedure for participating in the vested sick leave aspect of the lawsuit is different. **IF YOU WISH TO BE INCLUDED IN THE VESTED SICK LEAVE ASPECT OF THE SUIT, YOU DO NOT NEED TO DO ANYTHING.** This is true whether or not you signed and returned the Consent to Join form for the FLSA aspect of the suit.

#### **IV. YOUR RIGHTS AS A MEMBER OF THE CLASS**

If you come within the definition of the class set forth above in the Introduction, you will automatically become a class member unless you choose to be excluded. You do not need to sign or do anything to be included in the vested sick leave claim. As a class member, you will be represented by the class representatives and the attorneys representing the class. As a class member, you will be bound by any judgment or settlement of the vested sick leave claim, whether it is favorable or unfavorable. That means that you may not bring a separate suit against any of the defendants for the vested sick leave claim involved in this lawsuit. It also means that, upon proof of membership in the class, you will receive a share of any money obtained by the plaintiffs as a result of a judgment or settlement of the vested sick leave claim.

#### **V. YOUR RIGHTS IF YOU CHOOSE TO BE EXCLUDED FROM THE CLASS**

If you choose to be excluded from the class, you will not be affected by any judgment or settlement of the vested sick leave claim, and you will not receive any monies for vested sick leave if the plaintiffs prevail. If you choose to be excluded from the class, you will be able to obtain additional monies for vested sick leave only if you file your own lawsuit within the time provided by law and you prevail on your claims.

To ask to be excluded from the class, you must mail an "Exclusion Request" in the form of a letter, stating that you want to be excluded from the class in Kelly v. City and County of San Francisco, Case No. C 05-1287 SI (ENE). Be sure to include your name and address, and sign the letter. If you wish to be excluded, you must mail your Exclusion Request to: Clerk of Court, U.S. District Court, Northern District of California, 450 Golden Gate Avenue, P.O. Box 36060, San Francisco, CA 94102. Your Exclusion Request must be received by April 28, 2006. The sender bears the responsibility for any delay in delivery or for non-delivery.

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**VI. CLASS COUNSEL**

The Court has appointed the following law firm as Class Counsel: McCarthy, Johnson & Miller Law Corporation, 595 Market Street, Suite 2200, San Francisco, CA 94105. By doing so, the Court determined that this firm is qualified to represent you and all Class Members. You do not need to hire your own lawyer because Class Counsel is working on your behalf. If you want your own lawyer, you have the right to hire one, but you will have to pay that lawyer.

**VII. CHANGE OF ADDRESS**

If you move after receiving this notice, or if it was misaddressed, you should supply your name and correct address to Class Counsel: Diane Sidd-Champion, McCarthy, Johnson & Miller Law Corporation, 595 Market Street, Suite 2200, San Francisco, CA 94105. This is important so that future notices reach you.

**VIII. ADDITIONAL INFORMATION**

For further information about this notice or this lawsuit, you may telephone Diane Sidd-Champion at McCarthy, Johnson & Miller Law Corporation at (415) 882-2992 or (916) 443-0726.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT WITH QUESTIONS REGARDING THIS NOTICE.

**THIS NOTICE HAS BEEN AUTHORIZED BY THE HONORABLE SUSAN ILLSTON, THE UNITED STATES DISTRICT JUDGE TO WHOM THIS CASE HAS BEEN ASSIGNED. ALTHOUGH THE COURT HAS AUTHORIZED THE SENDING OF THIS NOTICE, THE COURT EXPRESSES NO OPINION REGARDING THE MERITS OF PLAINTIFFS' CLAIMS OR THE CITY'S LIABILITY, IF ANY.**

1/3/06

Dated: \_\_\_\_\_

By: \_\_\_\_\_

